company cannot refuse service solely because of past debts due it from the consumer. *Danaher* v. *Southwestern Telegraph Co.*, 94 Ark. 533, 127 S.W. 963; *Crumley* v. *Watauga Water Co.*, 99 Tenn. 420, 41 S. W. 1058; *State ex rel. Atwater* v. *Delaware L. & W. R. Co.*, 48 N. J. L. 55, 2 Atl. 803. If a carrier enjoys any rights of priority, it is only to the use of its own facilities for its own indispensable needs as a carrier. *Louisville & Nashville R. Co.* v. *Queen City Coal Co.*, 13 Ky. L. Rep. 832. See *Royal Coal & Coke Co.* v. *Southern Ry. Co.*, 13 Interst. Com. Comm. R. 440. In the instant case the carrier had no contract right to the specific coal and therefore could not get specific performance as to *this* coal even in equity. The virtual recognition by the court of a right of *angary* in public utilities, it is submitted, is without precedent and should not be followed. Its implications involve all the dangers of self-help. Even the power of eminent domain is no defense to a taking of property by self-help, which is certainly not due process. *City of Clinton* v. *Franklin*, 119 Ky. 143, 83 S. W. 140.

CARRIERS — DUTY TO TRANSPORT AND DELIVER — REFUSAL TO DELIVER WITHOUT PRODUCTION OF A LOST ORDER BILL OF LADING. — An interstate shipment of perishable goods was routed over connecting carriers, the initial carrier giving a through bill of lading to the shipper's order, notify a third party. The bill of lading was lost or delayed, and upon the arrival of the goods, the shipper's agent requested delivery. The terminal carrier refused to deliver without production of the bill of lading or a bond of indemnity. The initial carrier did not require a bond, and wired the terminal carrier to deliver. Several days elapsed after the receipt of this telegram before the terminal carrier made delivery, and in this period the goods were injured by frost. Suit was brought by the shipper against the initial carrier. The Carmack Amendment to the Interstate Commerce Act subjects the initial carrier to liability for "loss, damage or injury" caused goods by the default of a connecting carrier (34 U. S. STAT. AT L. 595, c. 3591, § 7). *Held*, that the shipper may recover. *McCotter* v. *Norfolk So. R. Co.*, 100 S. E. 326 (N. C.).

. A carrier in delivering goods without requiring the production of an order bill of lading, does so at its peril, and in case of misdelivery is liable for a conversion to the person entitled to receive the goods. *Forbes* v. *Boston & Albany R. Co.*, 133 Mass. 154; *Ratzer* v. *Burlington, etc. R. Co.*, 64 Minn. 245, 66 N. W. 988. The same is true though the bill of lading contains a direction to notify a third person. *No. Pa. R. Co.* v. *Commercial Bank*, 123 U. S. 727; *Atlanta Nat. Bank* v. *So. R. Co.*, 106 Fed. 623; *Union Stock Yards Co.* v. *Westcott*, 47 Neb. 300, 66 N. W. 419. Accordingly, the carrier may, for its own protection, make the production of the bill of lading a condition to delivery. *Kaufman* v. *Seaboard Air Line R.*, 10 Ga. App. 248, 73 S. E. 592. That the consignor, to whose order the bill was taken, requests a delivery, should not alter the situation. See *Schlichting* v. *Chicago, etc. R. Co.*, 121 Ia. 502, 96 N. W. 959. If the goods are perishable, and the bill of lading has been lost or delayed, the law should not allow an *impasse*. It would seem proper to require that the carrier deliver in such case without receiving the bill of lading, if he is properly indemnified against possible loss by the party requesting delivery. In the principal case recovery was allowed as for a default of the terminal carrier. But as it does not appear that it was offered indemnity, or that it assented to deliver without such protection before the delivery was actually made, it seems questionable whether a breach of duty on the part of the terminal carrier has been made out. It is possible, however, that the initial carrier was itself in default in failing to take and offer to the terminal carrier the indemnity offered by the shipper.

CARRIERS — REGULATION OF RATES — GOOD FAITH IN RECEIVING A REBATE AS A DEFENSE TO THE SHIPPER UNDER THE ELKINS ACT. — The de-

fendant below, a shipper, was indicted, convicted, and fined for accepting rebates and concessions from the Central R. R. of New Jersey in violation of the Elkins Act as amended in 1906 (38 STAT. AT L. 584). The defendant had leased its own road to the railroad company in 1871, the lessee covenanting that all coal shipped from the lessor's mines should be transported at a rate from a certain point, about 14 per cent less than other shippers paid. After the passage of the Elkins Act, with each tariff filed was a footnote reciting that "in compliance with the tenth Covenant of the lease from the Lehigh Coal and Navigation Company . . . a lateral allowance is made out of the herein named rates to the Lehigh Coal and Navigation Company." The shipper offered evidence that he received this allowance, believing that this complied with the law. The court below rejected this evidence of good faith, but certified the question to the Supreme Court. *Held*, that the evidence should have been received. *Lehigh Coal & Navigation Co.* v. *United States*, U. S. Sup. Ct., October Term, 1919, No. 38.

The essential idea of the Interstate Commerce Acts is that the filed and published rates shall be a definite standard for all. See *New Haven R. R.* v. *I. C. C.*, 200 U. S. 361, 391, 398; *Lehigh Valley R. R.* v. *United States*, 243 U. S. 444, 446. Any device whereby one shipper's goods are carried for a lower rate, directly or indirectly, is prohibited. *United States* v. *Union Stockyards Transit Co.*, 226 U. S. 286; *Armour Packing Co.* v. *United States*, 209 U. S. 56. Discrimination is unnecessary. *Vandalia R. R.* v. *United States*, 226 Fed. 713. All prior contracts whereby special rates or favors were given are abrogated by the Act. *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467; *Armour Packing Co.* v. *United States*, *supra*. Good faith in the sense of absence of an intent to violate the statute is immaterial. *C. St. P. M. & O. Ry.* v. *United States*, 162 Fed. 835, *certiorari* denied, 212 U. S. 579; *Armour Packing Co.* v. *United States*, *supra*. But see *Standard Oil Co. of Indiana* v. *United States*, 164 Fed. 376. The court in the principal case apparently assumes and correctly so, that the filing of this clause of the lease did not satisfy the statute. See *Armour Packing Co.* v. *United States*, 209 U. S. 56, 81. *Cf. Boston & Maine R. R.* v. *Hooker*, 233 U. S. 97. It is difficult to regard good faith in believing that one has complied with the statute as of greater weight than good faith in the sense of absence of intent to evade the statute. The carrier involved in the principal case was indicted and convicted on the same facts and a writ of *certiorari* was denied by the Supreme Court. *Central R. R. of New Jersey* v. *United States*, 229 Fed. 501, *certiorari* denied, 241 U. S. 658. Although the cases are distinguishable on the point of procedure, the Act would seem to place carrier and shipper on the same footing, and what is a crime for one should be a crime for the other unless we adopt the too common theory that a railroad is *a fortiori* a criminal.

CHARITABLE USES AND TRUSTS — *CY-PRÈS* — WHETHER BETTER SATISFACTION OF ARTISTIC SENSE JUSTIFIES A CHANGE. — A church was the trustee of a fund that had been collected to procure and erect a statue of an ecclesiastic near the church. After the statue had been erected, the church sought permission to substitute another statue of the same ecclesiastic, purchased by authority of the court from the surplus funds on the ground that the latter was artistically the superior. *Held*, that the change cannot be allowed. *Eliot* v. *Attwill*, 122 N. E. 648 (Mass.).

For a discussion of this case, see NOTES, p. 598, *supra*.

CONSTITUTIONAL LAW — POWERS OF LEGISLATURE: DELEGATION OF POWERS — INITIATIVE AND REFERENDUM IN CANADA. — The legislative assembly of Manitoba passed an act providing that laws might be made and repealed by direct vote of the electors. (6 GEO. V, c. 59, Manitoba.) The act